

Admin.

October 30, 2003

Memorandum 2003-33

2003-2004 Annual Report (Staff Draft)

Attached to this memorandum is a staff draft of the body of the Commission's *2003-2004 Annual Report*. In the interest of saving photocopying and mailing costs, we have not reproduced here the various tables and appendices that are published as part of the annual report (e.g., text of Commission's governing statute, cumulative table of legislative action on Commission recommendations, revised Comments to legislation enacted during session, etc.). If the draft is approved, the staff will assemble the various parts together with the body of the annual report and send it to the printer.

The annual report notes activities by Commission members and staff related to the Commission's work, such as speeches made and articles published during the past year. Please notify the staff if you have any activities of this nature to report.

We have also added to the draft a note about the Commission's 50th anniversary. We could do more, but our resources are currently so constrained we have elected not to.

The unconstitutional statutes writeup in this edition of the annual report was prepared with the assistance of Jeff Vize, the Commission's work study law clerk who is a student at UC Davis School of Law.

If you have any editorial suggestions relating to the draft, please be sure to inform the staff.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Staff Draft

2003-2004 Annual Report

50th Anniversary Edition

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

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SUMMARY OF WORK OF COMMISSION

The year 2003-2004 marks the 50th anniversary of the creation of the California Law Revision Commission.

Recommendations Enacted in the 2003 Legislative Session

In 2003, five bills effectuating the Commission's recommendations were enacted, relating to the following subjects:

- Exemptions from enforcement of money judgments (second decennial review)
- Organization of Davis-Stirling Common Interest Development Act
- Probate Code technical corrections
- Procedural fairness in homeowners association rulemaking and decisionmaking
- Statutes made obsolete by trial court restructuring (part 2)
- Stay of mechanic's lien enforcement pending arbitration

A resolution was adopted continuing the Commission's authority to study 20 topics previously authorized and adding authority to study the Uniform Statute and Rule Construction Act (1995).

Recommendations to the 2004 Legislature

In 2004, the Commission plans to submit recommendations on the following subjects to the Legislature:

- Alternative dispute resolution in common interest developments
- Authority of court commissioer
- Common interest development information center
- Reorganization of discovery statute
- Uniform Unincorporated Nonprofit Association Act

In addition, the Commission recommends enactment of two measures introduced in 2003 that remain pending in the Legislature as two-year bills to the extent they would effectuate Commission recommendations on the following subjects:

- Double liability problem in home improvement contracts

- Obsolete reporting requirements

The Commission may submit additional recommendations if work is completed in time to enable their introduction during the legislative session.

Commission Activities Planned for 2004

During 2004, the Commission will work on the following major topics: financial privacy, mechanic's lien law, common interest development law, discovery improvements from other jurisdictions, jurisdictional limits of small claims and limited civil cases, governance of unincorporated associations, and conforming the California Evidence Code to the Federal Rules of Evidence. The Commission will also consider other subjects to the extent time permits.

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STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

4000 MIDDLEFIELD ROAD, ROOM D-1
PALO ALTO, CA 94303-4739
650-494-1335

FRANK KAPLAN, Chairperson
WILLIAM E. WEINBERGER, Vice Chairperson
DIANE F. BOYER-VINE
JOYCE G. COOK
ASSEMBLY MEMBER ELLEN M. CORBETT
C. HUGH FRIEDMAN
DAVID HUEBNER
DESIREE ICAZA KELLOGG
SENATOR BILL MORROW
EDMUND L. REGALIA

November 21, 2003

To: *The Honorable Arnold Schwarzenegger*
Governor of California, and
The Legislature of California

In conformity with Government Code Section 8293, the California Law Revision Commission submits this report of its activities during 2003 and its plans for 2004.

This year marks the 50th anniversary of the creation of the Commission. During that period the Commission has become an important feature of the state's legal landscape, providing a reliable source for nonpartisan reform of California law. Notable enactments on Commission recommendation include creation of the Evidence Code, recodification of the Probate Code, and establishment of the Family Code. Many statutes recommended by the Commission have become national models, including the Eminent Domain Law and the Trust Act. Other major enactments recommended by the Commission include the governmental liability act, prejudgment remedies and enforcement of judgments law, real property remedies, power of attorney laws, Administrative Procedure Act reform, Health Care Decisions Law, and implementation of trial court unification. In all, more than 300 recommendations of the Commission have been enacted into law, affecting more than 20,000 sections of the California codes — a living testament to the foresight of the Legislature and Governor who, 50 years ago, established the Commission as a permanent institution for ongoing improvement of California law.

Five bills and one resolution introduced in 2003 to effectuate Commission recommendations were enacted. Two Commission

recommendations that were introduced remain pending as two-year bills.

The Commission is grateful to the members of the Legislature who carried Commission-recommended legislation:

- Assembly Member Patricia C. Bates (procedural fairness in CID rulemaking and decisionmaking; organization of Davis-Stirling CID Act)
- Assembly Member John Dutra (double liability problem in home improvement contracts)
- Assembly Member Tom Harman (Probate Code technical revisions; exemptions from enforcement of money judgment)
- Senator Dick Ackerman (stay of mechanic's lien enforcement pending arbitration)
- Senator Wm. "Pete" Knight (obsolete reporting requirements)
- Senator Bill Morrow (resolution of Commission authority)
- Senate Judiciary Committee (trial court restructuring)

The Commission held four one-day meetings and one two-day meeting during 2003. Meetings were held in Burbank and Sacramento.

Respectfully submitted,

Frank Kaplan
Chairperson

2003-2004 ANNUAL REPORT

50th Anniversary Edition

This year marks the 50th anniversary of the creation of the Commission.¹ During that period the Commission has become an important feature of the state's legal landscape, providing a reliable source for nonpartisan reform of California law. Notable enactments on Commission recommendation include creation of the Evidence Code, recodification of the Probate Code, and establishment of the Family Code. Many statutes recommended by the Commission have become national models, including the Eminent Domain Law and the Trust Act. Other major enactments recommended by the Commission include the governmental liability act, prejudgment remedies and enforcement of judgments law, real property remedies, power of attorney laws, Administrative Procedure Act reform, Health Care Decisions Law, and implementation of trial court unification. In all, more than 300 recommendations of the Commission have been enacted into law, affecting more than 20,000 sections of the California codes — a living testament to the foresight of the Legislature and Governor who, 50 years ago, established the Commission as a permanent institution for ongoing improvement of California law.

Introduction

The California Law Revision Commission was created in 1953 as the permanent successor to the Code Commission and given responsibility for a continuing substantive review of California statutory and decisional law.² The Commission studies the law to discover defects and anachronisms and recommends legislation to make needed reforms.

The Commission assists the Legislature in keeping the law up to date by:

1. See 1953 Cal. Stat. ch. 1445, operative September 9, 1953. The first meeting of the Commission was held on February 23, 1954.

2. See Gov't Code §§ 8280-8298 (statute establishing Law Revision Commission) (Appendix 1 *infra*). See also *1955 Report* [Annual Report for 1954] at 7, 1 Cal. L. Revision Comm'n Reports (1957).

- Intensively studying complex and sometimes controversial subjects
- Identifying major policy questions for legislative attention
- Gathering the views of interested persons and organizations
- Drafting recommended legislation for legislative consideration

The Commission's efforts enable the Legislature to focus on significant policy questions in a recommendation rather than on the technical issues that can be resolved in the process of preparing background studies, working out intricate legal problems, and drafting implementing legislation. The Commission thus helps the Legislature accomplish needed reforms that otherwise might not be made because of the heavy demands on legislative time. In some cases, the Commission's report demonstrates that no new legislation on a particular topic is needed, thus relieving the Legislature of the need to study the topic.

The Commission consists of:³

- A Member of the Senate appointed by the Rules Committee
- A Member of the Assembly appointed by the Speaker
- Seven members appointed by the Governor with the advice and consent of the Senate
- The Legislative Counsel, who is an ex officio member

The Commission may study only topics that the Legislature has authorized. The Commission now has a calendar of 21 topics.⁴

The Commission has submitted 350 recommendations to the Legislature — 328 have been enacted in whole or in substantial part.⁵ Commission recommendations have resulted in the enactment of legislation affecting 21,716 sections of California law: 4,245 sections amended, 9,203 sections added, and 8,268 sections repealed.

3. For current membership, See "Personnel of Commission," *infra*.

4. See list of topics in *Calendar of Topics Authorized for Study*, Appendix 2 *infra*.

5. See *Legislative Action on Commission Recommendations*, Appendix 3 *infra*.

The Commission's recommendations, reports, and other selected materials are published in softcover and later collected in hardcover volumes. Recent materials are also available through the Internet. A list of past publications and information on obtaining printed or electronic versions are at the end of this Annual Report.⁶

2004 Legislative Program

In 2004, the Commission plans to submit recommendations to the Legislature concerning the following subjects:

Civil Procedure and Judicial Administration

Authority of Court Commissioner. The Commission will recommend cleanup of Code of Civil Procedure provisions governing the authority of a court commissioner, with the objective of eliminating obsolete provisions relating to notarial functions and correcting the standard under which a commissioner may serve as temporary judge.

Reorganization of Discovery Statute. The Commission will recommend nonsubstantive reorganization of the civil discovery statute, splitting unduly long statutes into shorter, more user-friendly, provisions.

Common Interest Development Law

Alternative Dispute Resolution in Common Interest Developments. The Commission will recommend improvement of the mechanisms available to homeowners and associations to resolve disputes between them outside of court.

CID Information Center. The Commission will recommend establishment of a state operated common interest development information center that will provide web-based information to homeowners and associations about common interest development law and dispute resolution resources available to them.

Unincorporated Associations

The Commission will recommend enactment of selected provisions of the Uniform Unincorporated Nonprofit Association

6. See *Commission Publications*, Appendix 7 *infra*.

Act, together with consolidation and clarification of the laws governing unincorporated associations.

Mechanic's Liens

The Commission has previously recommended revision of the mechanic's lien law to address the double payment problem arising under home improvement contracts. The Commission will pursue legislative implementation of this recommendation by appropriate amendment of pending legislation.

Obsolete Reporting Requirements

The Commission will continue to seek enactment of previously recommended legislation to clean out of the codes numerous obsolete statutory provisions that required state agencies to prepare various reports. The legislation remains pending as a two-year bill.

Major Studies in Progress

During 2004, the Commission will work on the following major topics: financial privacy, mechanic's lien law, common interest development law, discovery improvements from other jurisdictions, jurisdictional limits of small claims and limited civil cases, governance of unincorporated associations, and conforming the California Evidence Code to the Federal Rules of Evidence. The Commission will also consider other subjects to the extent time permits.

Financial Privacy

The Legislature in 2002 directed the Commission to study, report on, and prepare recommended legislation concerning the protection of personal information relating to, or arising out of, financial transactions. The report is due January 1, 2005. In light of the Legislature's enactment of comprehensive legislation in California in 2003, the main tasks remaining involve the interrelation of the new legislation with federal law and with other state law. The Commission will continue to give this matter a high priority during 2004.

Mechanic's Lien Law

The Commission has initiated work on mechanic's lien law pursuant to a legislative request for a comprehensive review on a priority basis. The Commission interrupted its progress on this study in 2003 during a transitional period of personnel changes and declining resources, but plans to reactivate the study on a priority basis during 2004.

Common Interest Development Law

The Commission will continue its review of statutes affecting common interest housing developments with the goal of setting a clear, consistent, and unified policy regarding their formation and management and the transaction of real property interests located within them. The objective of the review is to clarify the law and eliminate unnecessary or obsolete provisions, to consolidate existing statutes in one place in the codes, and to determine to what extent common interest developments should be subject to regulation.

Discovery Improvements from Other Jurisdictions

The Commission in 2004 will continue its review of discovery developments in other jurisdictions to determine whether they may be appropriate models for improvement of discovery practice in California. Professor Gregory S. Weber of McGeorge School of Law has prepared a background study for the Commission.

Jurisdictional Limits of Small Claims and Limited Civil Cases

The Commission is conducting a review of basic trial court procedures under unification. In 2004, the Commission will continue its study of what, if any, changes should be made to the jurisdictional limits for use of small claims and limited civil case procedures in the unified courts. This is a joint project with the Judicial Council.

Governance of Unincorporated Associations

The Commission has completed its analysis of whether the Uniform Unincorporated Nonprofit Association Act should be adopted in California in whole or in part and made its recommendations to the Legislature for appropriate revision of the

law. During 2004 the Commission will turn to issues involving unincorporated association governance. The Commission is working closely with the State Bar Nonprofit Organizations Committee.

Conforming Evidence Code to Federal Rules of Evidence

The Commission has commenced work to determine whether the California Evidence Code should be conformed to the Federal Rules of Evidence on points where they differ. This is a multi-year project that will cover the entire Evidence Code in discrete segments. During 2004 the Commission will continue to focus on the hearsay rule and its exceptions. Professor Miguel Méndez of Stanford Law School is preparing a series of background studies for the Commission.

Other Subjects

The major studies in progress described above will dominate the Commission's time and resources during 2004. The Commission will consider other subjects as time permits, including appellate jurisdiction issues resulting from trial court unification, waiver of evidentiary privileges, statutes of limitation in legal malpractice actions, and the Uniform Trust Code. The Commission is also anticipating receipt of a background study on possible arbitration improvements from other jurisdictions.

Calendar of Topics for Study

The Commission's calendar includes 21 topics authorized by the Legislature for study.⁷ Due to its current heavy workload and reduced resources, the Commission recommends that no new topics be added to its calendar in 2004.

7. See *Calendar of Topics Authorized for Study*, Appendix 2 *infra*.

Function and Procedure of Commission

The principal duties of the Commission are to:⁸

- (1) Examine the common law and statutes for the purpose of discovering defects and anachronisms.
- (2) Receive and consider suggestions and proposed changes in the law from the American Law Institute, the National Conference of Commissioners on Uniform State Laws,⁹ bar associations, and other learned bodies, and from judges, public officials, lawyers, and the public generally.
- (3) Recommend such changes in the law as it deems necessary to bring California law into harmony with modern conditions.¹⁰

The Commission is required to file a report at each regular session of the Legislature containing a calendar of topics selected by it for study, listing both studies in progress and topics intended for future consideration. Under its general authority, the Commission may study only topics that the Legislature, by concurrent resolution, authorizes for study.¹¹ However, the Commission may study and recommend revisions to correct

8. Gov't Code §§ 8280-8298 (statute governing California Law Revision Commission). See Appendix 1 *infra*.

9. The Legislative Counsel, an ex officio member of the Law Revision Commission, serves as a Commissioner of the Commission on Uniform State Laws. See Gov't Code § 8261. The Commission's Executive Secretary serves as an Associate Member of the National Conference of Commissioners on Uniform State Laws.

10. Gov't Code § 8289. The Commission is also directed to recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the California Supreme Court or the United States Supreme Court. Gov't Code § 8290. See "Report on Statutes Repealed by Implication or Held Unconstitutional" *infra*.

11. Gov't Code § 8293. Section 8293 requires a concurrent resolution authorizing the Commission to study topics contained in the calendar of topics set forth in the Commission's regular report to the Legislature. Section 8293 also requires that the Commission study any topic that the Legislature by a concurrent resolution refers to the Commission for study. For an example of a concurrent resolution referring a specific topic to the Commission for study, see 2002 Cal. Stat. res. ch. 167 (ACR 125) (financial privacy study).

technical or minor substantive defects in state statutes without a prior concurrent resolution.¹² Additionally, some statutes directly confer authority to study particular subjects.¹³

Background Studies

The Commission's work on a recommendation typically begins after a background study has been prepared. The background study may be prepared by a member of the Commission's staff or by a specialist in the field who is retained as a consultant.¹⁴ Law

12. Gov't Code § 8298.

13. Code of Civil Procedure Section 703.120(a) requires the Commission to review statutes providing for exemptions from enforcement of money judgments every 10 years and to recommend any needed revisions. The Commission also has continuing statutory authority to study enforcement of judgments pursuant to Code of Civil Procedure Section 703.120(b).

Government Code Section 70219 requires the Commission, in consultation with the Judicial Council, to perform follow-up studies taking into consideration the experience in courts that have unified. For a list of specific studies, see *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51, 82-86 (1998).

Government Code Section 71674 requires the Commission to recommend repeal of provisions made obsolete by the Trial Court Employment Protection and Governance Act (Gov't Code § 71600 *et seq.*), Lockyer-Isenberg Trial Court Funding Act of 1997 (1997 Cal. Stat. ch. 850), and the implementation of trial court unification.

Statutory authority may not be codified. See, e.g., 1996 Cal. Stat. ch. 856, § 12 (study of revisions of Public Utilities Code resulting from utility deregulation, in consultation with Public Utilities Commission).

14. The following persons serve as Commission consultants: James E. Acret, Thelen, Reid & Priest, Pacific Palisades; Prof. Roger P. Alford, Pepperdine University School of Law; Prof. Michael Asimow, UCLA Law School; Prof. David M. English, University of Missouri Law School; Prof. Susan F. French, UCLA Law School; David Gould, McDermott, Will & Emery, Los Angeles; Brian Gurwitz, Deputy District Attorney, Orange County; Prof. Edward C. Halbach, Jr., Berkeley; Judge Joseph B. Harvey (ret.), Susanville; Keith Honda, Principal Administrative Analyst, Monterey County; Prof. Michael Hone, University of San Francisco School of Law; Gordon Hunt, Hunt, Ortmann, Blasco, Palffy & Rossell, Pasadena; Prof. Gideon Kanner, Berger & Norton, Burbank (formerly with Loyola Law School); Prof. J. Clark Kelso, McGeorge School of Law, Institute for Legislative Practice; Prof. William M. McGovern, UCLA Law School; Prof. Miguel A. Méndez, Stanford Law School; Mark Overland, Overland & Gits, Santa Monica; Prof. Frederick Tung, University of San Francisco School of Law; Prof. Gerald F. Uelmen, Santa Clara University

professors and practicing attorneys who serve as consultants have already acquired the considerable knowledge necessary to understand the specific problems under consideration, and receive little more than an honorarium for their services. From time to time, expert consultants are also retained to advise the Commission at meetings.

Recommendations

After making its preliminary decisions on a subject, the Commission ordinarily distributes a tentative recommendation to interested persons and organizations, including the State Bar, local and specialized bar associations, public interest organizations, and business and professional associations. Notice of the availability of the tentative recommendation is mailed to interested persons on the Commission's mailing list and publicized in legal newspapers and other relevant publications. Notice is also posted on the Commission's website and emailed to interested persons.

Comments received on the tentative recommendation are considered by the Commission in determining what recommendation, if any, will be made to the Legislature. When the Commission has reached a conclusion on the matter,¹⁵ its recommendation to the Legislature (including a draft of any necessary legislation) is published and distributed in printed form and in digital form on the Internet. If a background study has been prepared in connection with the recommendation, it may be published by the Commission or in a law review.¹⁶

School of Law; Prof. Gregory S. Weber, McGeorge School of Law; Judge David S. Wesley, Los Angeles Superior Court.

15. Occasionally one or more members of the Commission may not join in all or part of a recommendation submitted to the Legislature by the Commission. Dissents are noted in the minutes of the meeting at which the recommendation is approved.

16. For recent background studies published in law reviews, see Méndez, *California Evidence Code - Federal Rules of Evidence, I. Hearsay and Its Exceptions: Conforming the Evidence Code to the Federal Rules*, 37 U.S.F. L. Rev. 351 (2003); Méndez, *California Evidence Code - Federal Rules of Evidence, II. Expert Testimony and the Opinion Rule: Conforming the Evidence Code to the Federal Rules*, 37 U.S.F. L. Rev. 411 (2003); Tung, *After Orange County: Reforming California Municipal Bankruptcy Law*, 53 Hastings L.J. 885

Official Comments

The Commission ordinarily prepares an official Comment explaining each section it recommends for enactment, amendment, or repeal. The Comments are included in the Commission's printed recommendations. A Comment indicates the derivation of a section and often explains its purpose, its relation to other law, and potential issues concerning its meaning or application.¹⁷

Commission Materials as Legislative History

Commission recommendations are printed and sent to both houses of the Legislature, as well as to the Legislative Counsel and Governor.¹⁸ Receipt of a recommendation by the Legislature is noted in the legislative journals, and the recommendation is referred to the appropriate policy committee.¹⁹

The bill introduced to effectuate a Commission recommendation is assigned to legislative committees charged with study of the matter in depth.²⁰ A copy of the recommendation is provided to

(2002); Weber, *Potential Innovations in Civil Discovery: Lessons for California from the State and Federal Courts*, 32 McGeorge L. Rev. 1051 (2001).

For a list of background studies published in law reviews before 2000, see 10 Cal. L. Revision Comm'n Reports 1108 n.5 (1971); 11 Cal. L. Revision Comm'n Reports 1008 n.5, 1108 n.5 (1973); 13 Cal. L. Revision Comm'n Reports 1628 n.5 (1976); 16 Cal. L. Revision Comm'n Reports 2021 n.6 (1982); 17 Cal. L. Revision Comm'n Reports 819 n.6 (1984); 18 Cal. L. Revision Comm'n Reports 212 n.17, 1713 n.20 (1986); 19 Cal. L. Revision Comm'n Reports 513 n.22 (1988); 20 Cal. L. Revision Comm'n Reports 198 n.16 (1990); 32 Cal. L. Revision Comm'n Reports 585 n.14 (2002).

17. Commission Comments are published by Lexis Law Publishing and West Group in their print and CD-ROM editions of the annotated codes, and printed in selected codes prepared by other publishers. Comments are also available on Westlaw and Lexis.

18. See Gov't Code §§ 8291, 9795; see also *Reynolds v. Superior Court*, 12 Cal. 3d 834, 847 n.18, 528 P.2d 45, 53 n.18, 117 Cal. Rptr. 437, 445 n.18 (1974) (Commission "submitted to the Governor and the Legislature an elaborate and thoroughly researched study").

19. See, e.g., Senate J. June 3, 2002, at 4585 (noting receipt of 2001-2002 recommendations and their transmittal to the Committee on Public Safety).

20. See, e.g., Office of Chief Clerk, California State Assembly, California's Legislature 126-27 (2000) (discussing purpose and function of legislative committee system).

legislative committee members and staff before the bill is heard and throughout the legislative process. The legislative committees rely on the recommendation in analyzing the bill and making recommendations to the Legislature concerning it.²¹

If an amendment is made to the bill that renders one of the Commission's original Comments inconsistent, the Commission generally will adopt a revised Comment and provide it to the committee. The Commission also provides this material to the Governor's office once the bill has passed the Legislature and is before the Governor for action. These materials are a matter of public record.

Until the mid-1980's, a legislative committee, on approving a bill implementing a Commission recommendation, would vote to adopt the Commission's recommendation as indicative of the committee's intent in approving the bill.²² If a Comment required revision, the revised Comment would be adopted as a legislative committee Comment. The committee's report would be printed in the journal of the relevant house.²³

The Legislature has discontinued the former practice due to increased committee workloads and an effort to decrease the volume of material reprinted in the legislative journals. Under current practice, a legislative committee relies on Commission

21. The Commission does not concur with the suggestion of the court in *Conservatorship of Wendland*, 26 Cal. 4th 519, 542, 28 P.3d 151, 166, 110 Cal. Rptr. 2d 412, 430 (2001), that a Commission Comment might be entitled to less weight based on speculation that the Legislature may not have read and endorsed every statement in the Commission's report. That suggestion belies the operation of the committee system in the Legislature. See White, *Sources of Legislative Intent in California*, 3 Pac. L.J. 63, 85 (1972) ("The best evidence of legislative intent must surely be the records of the legislature itself and the reports which the committees relied on in recommending passage of the legislation.").

22. See, e.g., *Baldwin v. State*, 6 Cal. 3d 424, 433, 491 P.2d 1121, 1126, 99 Cal. Rptr. 145, 150 (1972). For a description of legislative committee reports adopted in connection with the bill that became the Evidence Code, see *Arellano v. Moreno*, 33 Cal. App. 3d 877, 884, 109 Cal. Rptr. 421, 426 (1973).

23. For an example of such a report, see *Report of Senate Committee on Judiciary on Assembly Bill 3472*, Senate J. June 14, 1984, reprinted in 18 Cal. L. Revision Comm'n Reports 1, 115 (1986).

materials in its analysis of a bill, but does not separately adopt the materials. Instead, the Commission makes a report detailing the legislative history of the bill, including any revised Comments. Bill reports are published as appendices to the Commission's annual reports.²⁴

Use of Commission Materials To Determine Legislative Intent

Commission materials that have been placed before and considered by the Legislature are legislative history and are entitled to great weight in construing statutes.²⁵ The materials are a key interpretive aid for practitioners as well as courts,²⁶ and courts may judicially notice and rely on them.²⁷ Courts at all levels of the state²⁸ and federal²⁹ judicial systems depend on Commission

24. Commission reports have in the past been published as well in the legislative journals. See, e.g., *In re Marriage of Neal*, 153 Cal. App. 3d 117, 124, 200 Cal. Rptr. 341, 345 (1984) (noting that the Chairman of the Senate Judiciary Committee, when reporting on AB 26 on the Senate floor, moved that a revised Commission report be printed in the Senate Journal as evidence of legislative intent).

25. See, e.g., *Hale v. Southern Cal. IPA Med. Group, Inc.*, 86 Cal. App. 4th 919, 927, 103 Cal. Rptr. 2d 773, 778 (2001):

In an effort to discern legislative intent, an appellate court is entitled to take judicial notice of the various legislative materials, including committee reports, underlying the enactment of a statute. (*Kern v. County of Imperial* (1990) 226 Cal. App. 3d 391, 400, fn. 8 [276 Cal. Rptr. 524]; *Coopers & Lybrand v. Superior Court* (1989) 212 Cal. App. 3d 524, 535, fn. 7 [260 Cal. Rptr. 713].) In particular, reports and interpretive opinions of the Law Revision Commission are entitled to great weight. (*Schmidt v. Southern Cal. Rapid Transit Dist.* (1993) 14 Cal. App. 4th 23, 30, fn. 10 [17 Cal. Rptr. 2d 340].)

26. Cf. 7 B. Witkin, Summary of California Law *Constitutional Law* § 96, at 149 (9th ed. 1988) (Commission reports as aid to construction); Gaylord, *An Approach to Statutory Construction*, 5 Sw. U. L. Rev. 349, 384 (1973).

27. See, e.g., *Barkley v. City of Blue Lake*, 18 Cal. App. 4th 1745, 1751 n.3, 23 Cal. Rptr. 2d 315, 318-19 n.3 (1993).

28. See, e.g., *Sullivan v. Delta Air Lines, Inc.*, 15 Cal. 4th 288, 935 P.2d 781, 63 Cal. Rptr. 2d 74 (1997) (California Supreme Court); *Administrative Management Services, Inc. v. Fidelity & Deposit Co.*, 129 Cal. App. 3d 484, 181 Cal. Rptr. 141 (1982) (court of appeal); *Rossetto v. Barross*, 90 Cal. App. 4th Supp. 1, 110 Cal. Rptr. 2d 255 (2001) (appellate division of superior court).

materials to construe statutes enacted on Commission recommendation.³⁰ Appellate courts alone have cited Commission materials in several thousand published opinions.³¹

Commission materials have been used as direct support for a court's interpretation of a statute,³² as one of several indicia of legislative intent,³³ to explain the public policy behind a statute,³⁴ and on occasion to demonstrate (by their silence) the Legislature's intention not to change the law.³⁵ The Legislature's failure to adopt

29. See, e.g., *California v. Green*, 399 U.S. 149 (1970) (United States Supreme Court); *Southern Cal. Bank v. Zimmerman (In re Hilde)*, 120 F.3d 950 (9th Cir. 1997) (federal court of appeal); *Williams v. Townsend*, 283 F. Supp. 580 (C.D. Cal. 1968) (federal district court); *Ford Consumer Fin. Co. v. McDonell (In re McDonell)*, 204 B.R. 976 (B.A.P. 9th Cir. 1996) (bankruptcy appellate panel); *In re Garrido*, 43 B.R. 289 (Bankr. S.D. Cal. 1984) (bankruptcy court).

30. See, e.g., *Collection Bureau of San Jose v. Rumsey*, 24 Cal. 4th 301, 308 & n.6, 6 P.3d 713, 718 & n.6, 99 Cal. Rptr. 2d 792, 797 & n.6 (2000) (Comments to reenacted statute reiterate the clear understanding and intent of original enactment); *Brian W. v. Superior Court*, 20 Cal. 3d 618, 623, 574 P.2d 788, 791, 143 Cal. Rptr. 717, 720 (1978) (Comments persuasive evidence of the intent of the Legislature); *Van Arsdale v. Hollinger*, 68 Cal. 2d 245, 249-50, 437 P.2d 508, 511, 66 Cal. Rptr. 20, 23 (1968) (Comments entitled to substantial weight); *County of Los Angeles v. Superior Court*, 62 Cal. 2d 839, 843-44, 402 P.2d 868, 870-71, 44 Cal. Rptr. 796, 798-99 (1965) (statutes reflect policy recommended by Commission); *Volkswagen Pac., Inc. v. City of Los Angeles*, 7 Cal. 3d 48, 61-63, 496 P.2d 1237, 1247-48, 101 Cal. Rptr. 869, 879-80 (1972) (Comments evidence the clear legislative intent of the law).

31. In this connection it should be noted that the Law Revision Commission should not be cited as the "Law Revision Committee" or as the "Law Review Commission." See, e.g., *Venerable v. City of Sacramento*, 185 F. Supp. 2d 1128, 1132 (E.D. Cal. 2002) (Law Revision "Committee"); *Ryan v. Garcia*, 27 Cal. App. 4th 1006, 1010 n.2, 33 Cal. Rptr. 2d 158, 160 n.2 (1994) (Law "Review" Commission).

32. See, e.g., *People v. Ainsworth*, 45 Cal. 3d 984, 1015, 755 P.2d 1017, 1036, 248 Cal. Rptr. 568, 586 (1988).

33. See, e.g., *Heieck & Moran v. City of Modesto*, 64 Cal. 2d 229, 233 n.3, 411 P.2d 105, 108 n.3, 49 Cal. Rptr. 377, 380 n.3 (1966).

34. See, e.g., *Southern Cal. Gas Co. v. Public Utils. Comm'n*, 50 Cal. 3d 31, 38 n.8, 784 P.2d 1373, 1376 n.8, 265 Cal. Rptr. 801, 804 n.8 (1990).

35. See, e.g., *State ex rel. State Pub. Works Bd. v. Stevenson*, 5 Cal. App. 3d 60, 64-65, 84 Cal. Rptr. 742, 745-46 (1970) (finding that the Legislature had no

a Commission recommendation may be used as evidence of legislative intent to reject the proposed rule.³⁶

Commission materials are entitled to great weight, but they are not conclusive.³⁷ While the Commission endeavors in Comments to explain any changes in the law made by a section, the Commission does not claim that every consistent or inconsistent case is noted in the Comments,³⁸ nor can it anticipate judicial conclusions as to the significance of existing case authorities.³⁹ Hence, failure of the Comment to note every change the recommendation would make in prior law, or to refer to a consistent or inconsistent judicial decision, is not intended to, and should not, influence the construction of a clearly stated statutory provision.⁴⁰

Some types of Commission materials may not properly be relied on as evidence of legislative intent. Courts have on occasion cited

intention of changing existing law where “not a word” in the Commission’s reports indicated an intent to abolish or emasculate the well-settled rule).

36. See, e.g., *Nestle v. City of Santa Monica*, 6 Cal. 3d 920, 935-36, 496 P.2d 480, 490, 101 Cal. Rptr. 568, 578 (1972).

37. See, e.g., *Redevelopment Agency v. Metropolitan Theatres Corp.*, 215 Cal. App. 3d 808, 812, 263 Cal. Rptr. 637, 639 (1989) (Comment does not override clear and unambiguous statute). Commission materials are but one indicium of legislative intent. See, e.g., *Estate of Joseph*, 17 Cal. 4th 203, 216, 949 P.2d 472, 480, 70 Cal. Rptr. 2d 619, 627 (1998). The accuracy of a Comment may also be questioned. See, e.g., *Buzgheia v. Leasco Sierra Grove*, 30 Cal. App. 4th 766, 774, 36 Cal. Rptr. 2d 144, 149 (1994); *In re Thomas*, 102 B.R. 199, 202 (Bankr. E.D. Cal. 1989).

38. *Cf. People v. Coleman*, 8 Cal. App. 3d 722, 731, 87 Cal. Rptr. 554, 559 (1970) (Comments make clear intent to reflect existing law even if not all supporting cases are cited).

39. See, e.g., *Arellano v. Moreno*, 33 Cal. App. 3d 877, 885, 109 Cal. Rptr. 421, 426-27 (1973) (noting that decisional law cited in Comment was distinguished by the California Supreme Court in a case decided after enactment of the Commission recommendation).

40. The Commission does not concur in the *Kaplan* approach to statutory construction. See *Kaplan v. Superior Court*, 6 Cal. 3d 150, 158-59, 491 P.2d 1, 5-6, 98 Cal. Rptr. 649, 653-54 (1971). For a reaction to the problem created by the *Kaplan* approach, see *Recommendation Relating to Erroneously Ordered Disclosure of Privileged Information*, 11 Cal. L. Revision Comm’n Reports 1163 (1973); 1974 Cal. Stat. ch. 227.

preliminary Commission materials such as tentative recommendations and correspondence in support of their construction of a statute.⁴¹ This is not appropriate because the material is not placed before the Legislature during its consideration of the legislation.⁴² While these materials may be indicative of the Commission's intent in proposing the legislation, it is only the Legislature's intent in adopting the legislation that is entitled to weight in construing the statute.⁴³

A Commission study prepared after enactment of a statute that analyzes the statute is not part of the legislative history of the statute.⁴⁴ However, documents prepared by or for the Commission may be used by the courts for their analytical value, apart from their role in statutory construction.⁴⁵

41. See, e.g., *Yamaha Corp. v. State Bd. of Equalization*, 19 Cal. 4th 1, 12-13, 960 P.2d 1031, 1037, 78 Cal. Rptr. 2d 1, 7 (1998) (tentative recommendation). However, in some cases, proposed legislation will be based on a tentative, rather than final, Commission recommendation. See, e.g., *Estate of Archer*, 193 Cal. App. 3d 238, 243, 239 Cal. Rptr. 137, 140 (1987). In that event, reliance on the tentative recommendation is proper.

See also *Ilkchooyi v. Best*, 37 Cal. App. 4th 395, 406, 45 Cal. Rptr. 2d 766, 772-73 (1995) (letter responding to tentative recommendation); D. Henke, *California Legal Research Handbook* § 3.51 (1971) (background studies).

42. The Commission concurs with the opinion of the court in *Juran v. Epstein*, 23 Cal. App. 4th 882, 894 n.5, 28 Cal. Rptr. 2d 588, 594 n.5 (1994), that staff memoranda to the Commission should not be considered as legislative history.

43. *Cf. Rittenhouse v. Superior Court*, 235 Cal. App. 3d 1584, 1589, 1 Cal. Rptr. 2d 595, 598 (1991) (linking Commission's intent and Legislature's intent); *Guthman v. Moss*, 150 Cal. App. 3d 501, 508, 198 Cal. Rptr. 54, 58 (1984) (determination of Commission's intent used to infer Legislature's intent).

44. See, e.g., *Duarte v. Chino Community Hosp.*, 72 Cal. App. 4th 849, 856 n.3, 85 Cal. Rptr. 2d 521, 525 n.3 (1999).

45. See, e.g., *Sierra Club v. San Joaquin Local Agency Formation Comm'n*, 21 Cal. 4th 489, 502-03, 981 P.2d 543, 551-52, 87 Cal. Rptr. 2d 702, 712 (1999) (unenacted Commission recommendation useful as the "opinion of a learned panel"); *Hall v. Hall*, 222 Cal. App. 3d 578, 585, 271 Cal. Rptr. 773, 777 (1990) (Commission staff report most detailed analysis of statute available); *W.E.J. v. Superior Court*, 100 Cal. App. 3d 303, 309-10, 160 Cal. Rptr. 862, 866 (1979) (law review article prepared for Commission provides insight into development of the law); *Schonfeld v. City of Vallejo*, 50 Cal. App. 3d 401, 407 n.4, 123 Cal.

Publications

Commission publications are distributed to the Governor, the Secretary of the Senate, the Chief Clerk of the Assembly, and the Legislative Counsel.⁴⁶ Commission materials are also distributed to interest groups, lawyers, law professors, courts, district attorneys, and law libraries throughout the state. A great many interested persons have an opportunity to study and comment on the Commission's work before it is considered for enactment by the Legislature.⁴⁷

The Commission's reports, recommendations, and studies are republished in hardcover volumes that serve as a permanent record of the Commission's work and, it is believed, are a valuable contribution to the legal literature of California. These volumes are available at many county law libraries and at some other libraries. About half of the hardcover volumes are out of print, but others are available for purchase.⁴⁸ Publications that are out of print are available as electronic files.⁴⁹

Electronic Publication and Internet Access

Since 1995, the Commission has provided a variety of information on the Internet, including online material and downloadable files.⁵⁰ Interested persons with Internet access can find the current agenda, meeting minutes, background studies,

Rptr. 669, 673 n.4 (1975) (court indebted to many studies of Commission for analytical materials).

46. See Gov't Code § 8291. For limitations on Section 8291, see Gov't Code §§ 9795, 11094-11099.

47. For a step-by-step description of the procedure followed by the Commission in preparing the 1963 governmental liability statute, see DeMouly, *Fact Finding for Legislation: A Case Study*, 50 A.B.A. J. 285 (1964). The procedure followed in preparing the Evidence Code is described in 7 Cal. L. Revision Comm'n Reports 3 (1965). See also Quillinan, *The Role and Procedures of the California Law Revision Commission in Probate and Trust Law Changes*, 8 Est. Plan. & Cal. Prob. Rep. 130-31 (Cal. Cont. Ed. Bar 1987).

48. See *Commission Publications*, Appendix 6 *infra*.

49. See "Electronic Publication and Internet Access" *infra*.

50. The URL for the Commission's website is <<http://www.clrc.ca.gov>>.

tentative and final recommendations, staff memoranda, and general background information.

Since 2002, all Commission publications and staff memoranda are available as electronic files. Recent publications and memoranda may be downloaded from the Commission's website. Files that are not on the website are available on request.⁵¹

Electronic Mail

Email commenting on Commission proposals or suggesting issues for study is given the same consideration as letter correspondence, if the email message includes the name and regular mailing address of the sender. Email to the Commission may be sent to *commission@clrc.ca.gov*.

The Commission distributes a large portion of its meeting agendas, staff memoranda, and other written materials electronically, by means of its website and email distribution lists. The Commission encourages use of email as an inexpensive and expedient means of communication with the Commission.

MCLE Credit

The Commission is approved by the State Bar of California as a minimum continuing legal education provider. Participants and attendees at Commission meetings may be eligible to receive MCLE credit. To receive credit for participation or attendance at a meeting, a person must register at the meeting. Meeting materials are available free of charge on the Internet⁵² or may be purchased in advance from the Commission.

Personnel of Commission

As of November 21, 2003, the following persons were members of the Law Revision Commission:

51. See *Commission Publications*, Appendix 6 *infra*.

52. See "Electronic Publication and Internet Access" *supra*.

Legislative Members ⁵³

Assembly Member Ellen M. Corbett, San Leandro
 Senator Bill Morrow, San Juan Capistrano

Members Appointed by Governor ⁵⁴

	<i>Term Expires</i>
Frank Kaplan, Santa Monica <i>Chairperson</i>	October 1, 2005
William E. Weinberger, Los Angeles <i>Vice Chairperson</i>	October 1, 2005
Joyce G. Cook, Los Angeles	October 1, 2007
C. Hugh Friedman, San Diego	October 1, 2007
David Huebner, Los Angeles	October 1, 2007
Desiree Icaza Kellogg, San Diego	October 1, 2007
Edmund L. Regalia, Walnut Creek	October 1, 2005

Legislative Counsel ⁵⁵

Diane F. Boyer-Vine, Sacramento

In December 2002, Julia Sylva resigned her appointment as a member of the Commission.

In February 2003, the Speaker of the Assembly appointed Ellen M. Corbett to serve as Assembly Member of the Commission, replacing former Assembly Member Howard Wayne who had left the Legislature.

In October 2003, the Governor reappointed Joyce G. Cook, David Huebner, and Desiree Kellogg, as members of the Commission, on expiration of their previous terms.

53. The Senate and Assembly members of the Commission serve at the pleasure of their respective appointing powers — the Senate Committee on Rules and the Speaker of the Assembly. Gov't Code § 8281.

54. Seven Commission members are appointed by the Governor with the advice and consent of the Senate. Gov't Code § 8281. These Commissioners serve staggered four-year terms. *Id.* The provision in Government Code Section 8281 to the effect that Commission members appointed by the Governor hold office until the appointment and qualification of their successors has been superseded by the rule in Government Code Section 1774 declaring a vacancy if there is no reappointment 60 days following expiration of the term of office. See also Gov't Code § 1774.7 (Section 1774 overrides contrary special rules unless specifically excepted).

55. The Legislative Counsel serves on the Commission by virtue of office. Gov't Code § 8281.

In October 2003, the Governor appointed C. Hugh Friedman as a member of the Commission, filling the vacancy created by the resignation of Julia Sylva.

Effective September 1, 2003, the Commission elected Frank Kaplan as Chairperson (succeeding David Huebner), and William E. Weinberger as Vice Chairperson (succeeding Frank Kaplan). The terms of the new officers end August 31, 2004.

The following persons are on the Commission's staff:

Legal

NATHANIEL STERLING
Executive Secretary

BRIAN P. HEBERT
*Assistant Executive
Secretary*

BARBARA S. GAAL
Staff Counsel

Administrative-Secretarial

VICTORIA V. MATIAS
Secretary

In July 2003, Lynne I. Urman resigned her position as staff counsel for the Commission. Ms. Urman had performed outstanding work for the Commission during her tenure, principally in the areas of civil practice and trial court unification and restructuring.

During the spring of 2003, Natalie Fisher, a student at the University of Santa Clara Law School, worked for the Commission in Palo Alto through the work study program. During the spring and fall of 2003, Jeffrey Vize, a student at UC Davis Law School, worked for the Commission in Sacramento through the work study program. During the summer of 2003, Faizal Nurani, a student at the University of Iowa Law School, worked for the Commission as a volunteer.

During 2003, legal research for the Commission was also performed by Nick Wellington and Chris Nolan, law students in the Public Law Research Institute at Hastings College of the Law under the direction of Professor David Jung and Steven Bonorris.

Commission Budget

The Commission's operations are funded from the state general fund. The amount appropriated to the Commission for the 2003-04 fiscal year from the general fund is \$550,000 — a reduction of 15% from the preceding year. This amount will be further reduced by an additional 16% — the Commission's share of an unallocated reduction of state agency personnel expenses enacted as part of the 2003-04 budget act. The Commission's budget is thus reduced by more than 30% over the past year.

These reductions have directly impacted the Commission's staffing and productivity. At full strength and maximum operational efficiency, the Commission employs five attorneys and two support staff. Following the past two years of budget reductions, the Commission's staff is down to half the optimum level, and the Commission's productivity has been significantly reduced.

The Commission has been forewarned of a further budget reduction for the 2004-05 fiscal year as large as 20%. Should a reduction of that magnitude occur, the Commission would be forced to make further personnel reductions during 2004 that would render it impossible to complete many of the projects identified in this Annual Report in a timely fashion.

The Commission's general fund allocation is supplemented by \$15,000 budgeted for income generated from sale of documents to the public, representing reimbursement for the production and shipping cost of the documents.

The Commission also receives substantial donations of necessary library materials from the legal publishing community, especially California Continuing Education of the Bar, Lexis Law Publishing, and West Group. The Commission receives additional library materials from other legal publishers and from other law reform agencies on an exchange basis, and has full access to the Stanford University Law Library and the McGeorge Law School Library. The Commission is grateful for their contributions.

Other Activities

The Commission is directed by statute to cooperate with bar associations and other learned, professional, or scientific associations, institutions, or foundations in any manner suitable for the fulfillment of the purposes of the Commission.⁵⁶

National Conference of Commissioners on Uniform State Laws

The Commission is directed by statute to receive and consider proposed changes in the law recommended by the National Conference of Commissioners on Uniform State Laws.⁵⁷ The Legislative Counsel and Commission member, Diane F. Boyer-Vine, is a member of the California Commission on Uniform State Laws and the National Conference of Commissioners on Uniform State Laws. The Commission's Executive Secretary, Nathaniel Sterling, is an associate member of the National Conference.

Commissioner Boyer-Vine attended the National Conference in Washington, D.C., in August 2003.

Mr. Sterling served as a member of the National Conference drafting committee on revision of the Uniform Durable Power of Attorney Act during 2003.

Legislative History of Recommendations in the 2003 Legislative Session

The Commission's recommendations were included in seven bills recommended for enactment and one resolution recommended for adoption in the 2003 legislative session. Five bills and the resolution were enacted; two bills remain pending as two-year bills.

Stay of Mechanic's Lien Enforcement Pending Arbitration

Senate Bill 113 (2003 Cal. Stat. ch. 22) was introduced by Senator Dick Ackerman to effectuate the Commission recommendation on *Stay of Mechanic's Lien Enforcement Pending Arbitration*, 30 Cal. L. Revision Comm'n Reports 307 (2000). The

56. Gov't Code § 8296.

57. Gov't Code § 8289.

recommendation was enacted, with amendments. See *Report of the California Law Revision Commission on Chapter 22 of the Statutes of 2003 (Senate Bill 113)*, 33 Cal. L. Revision Comm'n Reports xxx (2003) (Appendix 4 *infra*).

Probate Code Technical Corrections

Assembly Bill 167 (2003 Cal. Stat. ch. 32) was introduced by Assembly Member Tom Harman to effectuate the Commission recommendation on *Probate Code Technical Corrections*, 33 Cal. L. Revision Comm'n Reports 145 (2003). The recommendation was enacted as submitted.

Statutes Made Obsolete by Trial Court Restructuring

Senate Bill 79 (2003 Cal. Stat. ch. 149) was introduced by the Senate Judiciary Committee to effectuate the Commission recommendation on *Statutes Made Obsolete by Trial Court Restructuring: Part 2*, 33 Cal. L. Revision Comm'n Reports 169 (2003). The recommendation was enacted after a number of amendments were made. See *Report of the California Law Revision Commission on Chapter 149 of the Statutes of 2003 (Senate Bill 79)*, 33 Cal. L. Revision Comm'n Reports xxx (2002) (Appendix 5 *infra*).

Exemptions from Enforcement of Money Judgments

Assembly Bill 182 (2003 Cal. Stat. ch. 379) was introduced by Assembly Member Tom Harman to effectuate the Commission recommendation on *Exemptions from Enforcement of Money Judgments: Second Decennial Review*, 33 Cal. L. Revision Comm'n Reports 113 (2003). The recommendation was enacted as submitted.

Procedural Fairness in CID Rulemaking and Decisionmaking

Assembly Bill 512 (2003 Cal. Stat. ch. 557) was introduced by Assembly Member Patricia C. Bates to effectuate the Commission recommendation on *Common Interest Development Law: Procedural Fairness in Association Rulemaking and Decisionmaking*, 33 Cal. L. Revision Comm'n Reports 81 (2003). The portion of the recommendation relating to rulemaking was enacted, with significant amendments. See *Report of the California*

Law Revision Commission on Chapter 557 of the Statutes of 2003 (Assembly Bill 512), 33 Cal. L. Revision Comm'n Reports xxx (2003) (Appendix 6 *infra*). The portion of the recommendation relating to decisionmaking was not enacted.

Organization of Davis-Stirling CID Act

Assembly Bill 512 (2003 Cal. Stat. ch. 557) was introduced by Assembly Member Patricia C. Bates to effectuate the Commission recommendation on *Organization of Davis-Stirling Common Interest Development Act*, 33 Cal. L. Revision Comm'n Reports 1 (2003). The recommendation was enacted as submitted.

Obsolete Reporting Requirements

Senate Bill 111 was introduced by Senator Wm. "Pete" Knight to effectuate the Commission recommendation on *Obsolete Reporting Requirements*, 33 Cal. L. Revision Comm'n Reports 267 (2003). The measure is pending in the Legislature, to be acted on in 2004.

Double Liability Problem in Home Improvement Contracts

Assembly Bill 286 is a two-year bill introduced by Assembly Member John Dutra. It includes provisions that would effectuate aspects of the Commission recommendation on *The Double Liability Problem in Home Improvement Contracts*, 31 Cal. L. Revision Comm'n Reports 281 (2001). The bill will be further acted on in 2004.

Resolution Authorizing Topics for Study

Senate Concurrent Resolution 4 (2003 Cal. Stat. res. ch. 92) was introduced by Senator Bill Morrow. It continues the Commission's authority to study 20 topics previously authorized, and adds authority to study the Uniform Statute and Rule Construction Act (1995).

Report on Statutes Repealed by Implication or Held Unconstitutional

Government Code Section 8290 provides:

The commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the state or the Supreme Court of the United States.

Pursuant to this directive, the Commission has reviewed the decisions of the United States Supreme Court and the California Supreme Court published since the Commission's last Annual Report was prepared⁵⁸ and has the following to report:

- No decision holding a state statute repealed by implication has been found.
- One decision of the United States Supreme Court holding a state statute unconstitutional has been found.⁵⁹
- One decision of the California Supreme Court holding a state statute unconstitutional has been found.⁶⁰

58. This study has been carried through 31 Cal. 4th 1025 and 123 S.Ct. 2669 (2002-03 Term).

59. The Commission has also found one decision of the United States Supreme Court holding a state statute preempted by federal action and one decision of the United States Supreme Court holding a set of state statutes subject to constitutional scrutiny.

In *American Insurance Association v. Garamendi*, 123 S.Ct. 2374 (2003), the Court held that California's Holocaust Victim Insurance Relief Act (Ins. Code §§ 13800-13807), which required insurers to disclose information about European insurance policies in effect during the Holocaust era, impermissibly interfered with the President's conduct of foreign affairs, and was thus preempted. In response to this ruling, Assemblyman Koretz introduced Assembly Joint Resolution No. 44, which denounces the Court's decision. The resolution urges the state attorney general and insurance commissioner to investigate feasible alternatives to the unconstitutional law. The resolution also urges the U.S. Congress to "immediately enact legislation to require insurance companies to disclose their Holocaust era policy information." The resolution is pending in the Legislature.

In *Hillside Dairy, Inc. v. Lyons*, 123 S.Ct. 2142 (2003), the United States Supreme Court held that state regulation of milk pricing and pooling under Food and Agriculture Code Sections 32501-39912, 61801-62403, and 62700-62731 was not exempt from Commerce Clause or Privileges and Immunities Clause scrutiny. The Court did not express an opinion on the merits of the case and instead remanded the case for further proceedings consistent with its opinion.

60. In *Olszewski v. Scripps Health*, 30 Cal. 4th 798, 69 P.3d 927, 135 Cal. Rptr. 2d 1 (2003), the California Supreme Court held that federal law preempted a California law (Welf. & Inst. Code §§ 14124.791, 14124.74) that authorized

In *Stogner v. California*,⁶¹ the United States Supreme Court considered California Penal Code Section 803(g), which permits prosecution for sex-related child abuse within one year of the victim's report to the police. The Court held that application of this statute to cases that were time-barred at the time of the law's enactment violates the Ex Post Facto Clause of the United States Constitution.⁶²

In *County of Riverside v. Superior Court*,⁶³ the California Supreme Court held that a statute requiring local governments to submit to binding arbitration in labor disputes with firefighters and law enforcement officers⁶⁴ violated Article XI, Sections 1(b) and 11(a), of the California Constitution. The court reasoned that the statute deprived local governments of their constitutional authority to set the compensation of employees, and that the statute unconstitutionally delegated salary-setting to a private entity.⁶⁵

Recommendations

Pursuant to the mandate imposed by Government Code Section 8290, the Commission recommends the repeal of the provisions referred to under "Report on Statutes Repealed by Implication or Held Unconstitutional," *supra*, to the extent they have been held unconstitutional and have not been amended or repealed.

medical care provider recovery on liens against a judgment obtained by a Medicaid beneficiary from a third-party tortfeasor.

61. 123 S.Ct. 2446 (2003).

62. A bill to amend Penal Code Section 803 in response to *Stogner* is pending. See AB 1667 (Kehoe).

63. 30 Cal. 4th 278, 66 P.3d 718, 132 Cal. Rptr. 2d 713 (2003).

64. Code Civ. Proc. § 1299-1299.9.

65. A bill has been enacted in response to the court's decision. 2003 Cal. Stat. ch. 877 (SB 440 (Burton)).